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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,705	12/22/2000	Timothy Ray Martin	KCC-15,365.1	4547

35844 7590 06/15/2004

PAULEY PETERSEN & ERICKSON
2800 WEST HIGGINS ROAD
HOFFMAN ESTATES, IL 60195

EXAMINER

JACKSON, ANDRE L

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/748,705

Applicant(s)

MARTIN ET AL.

Examiner

Andre' L. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-19,21-35 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-19,21-35 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-19, 21-35 and 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 1,638,073 to Van Heusen. Van Heusen (Fig. 6) discloses a fastener useable with an absorbent article, wherein the fastener comprises;

a first component (4) including a first portion and a second portion attached to one another to form a cavity there-between, the first and second portion defining either a loop backing material (7) or hook backing material (6) with a plurality of loops or hooks protruding from it; a second component (3) including a flat portion (5) that fits into the cavity of the first component, the second component defining either a hook backing material or loop backing material with a plurality of hooks or loops protruding from it, wherein a first surface of the flat portion and the first portion of the first component are releasably engageable with one another. However, Van Heusen does not illustrate or disclose in the preferred embodiment that a part of the backing of the first component can be lifted and folded back at an angle as claimed, instead Van Heusen has a part or flap (3c) attached to the flat portion of the second component as seen in Fig. 6, which can be lifted at any desired angle and/or pulled to properly seat the flat portion within the cavity. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the part or flap to be attached to the first component having the

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cavity, since it has been held that a mere reversal of essential working parts of a device involves only routine skill in the art. Further, it can be envisaged that a part or flap attached to the first component that can be folded back at an angle would enable convenient and easy one step attachment and release of the article fastener to assist a user who is limited in the use of a single hand or fingers.

As to claims 8-13, 21-26 and 37-42, Van Heusen discloses that various garments or wearing apparel can be used in combination with the fastener device, for example, shirts, garters and underwear, where the term underwear broadly encompasses a diaper, incontinence product, swimwear, etc... See col. 2, line 104 and col. 5, lines 50-55.

As to claims 33-35, the cavity or pocket defined between the first and second backing portions folded together characterize an array of angles that can fall within the range of 1 to 45 degrees, as evidenced by the different shapes and sizes of the fastening device illustrated in the various embodiments of Van Heusen, as seen in Figs. 1, 7, 8, 9 and 12.

Response to Applicant's Arguments

Applicant's arguments filed in the Amendment on March 19, 2004 have been fully considered but they are not persuasive.

In regards to applicant's remarks on pages 10-15 of the above amendment pertaining to the rejection of claims 27 and 30-35 over Van Heusen in view of Armour, claims 27-40, 42 and 43 over Van Heusen in view of Almo and claims 12, 25 and 41 over Van Heusen in view of Almo and further in view of Lacoursiere et al, are rendered moot in view of the new ground(s) of rejection.

In response to applicant's remarks on pages 9, 10 and 12 directed to Van Heusen and the amendment to the claims, Van Heusen is used as an obvious-type rejection of applicant's claims as stated above in this Action.

Applicant remarks pertaining to the recitation of new limitations provided in the preamble and in the body of the claims amended, is found not to be persuasive. Specifically, applicant states Van Heusen fails to disclose a fastening system incorporated within a disposable absorbent article as recited in the preamble of the amended claims. Moreover, applicant states Van Heusen fails to disclose a component defining a cavity having a part or portion to be lifted and folded back by at least 90 degrees as recited in the amended claims.

As to the amendment to the preamble in the claims, the recitation "A disposable absorbent article comprising a separable fastening system" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. Moreover, the Examiner would like to point out that Van Heusen (col. 2, lines 100-105) incorporates his fastener device with various articles or garments, in particular, shirts and or underwear. Here, the Examiner believes a shirt, especially a T-shirt and/or underwear absorb perspiration and/or odor from of a user, where the time period of when the shirt or undergarment is disposed of is based on personal preference, therefore, broadly interpreted the articles disclosed in Van Heusen define a disposable absorbent article as interpreted by the Examiner.

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As to applicant's claims reciting the added limitation, "wherein at least a part of the first portion of the hook/loop backing can be lifted and folded back by at least about 90 degrees", the Examiner takes the position that Fig. 6 of Van Heusen can be modified as an obvious reversal of parts to provide a fastener device operable with a single hand. Further, since the Examiner believes all of the structural components are present or shown in Van Heusen, the modification thereof is within the field of endeavor and can be considered an alternate design choice well known within the art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276.

The examiner can normally be reached on Mon. - Fri. (10 am - 6 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

André L. Jackson
Patent Examiner
AU 3677

ALJ



ROBERT J. SANDY
PRIMARY EXAMINER